

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MARIA VERAS,

Plaintiff,

-against-

JO ANNE B. BARNHART,
Commissioner of Social Security,

Defendant.
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GEORGE B. DANIELS, District Judge:

ORDER
05 CV 10782 (GBD)(DFE)

Plaintiff commenced this action challenging the final determination of the Commissioner of Social Security (“Commissioner”) denying her application for Supplemental Security Income disability benefits. Both parties are moving, pursuant to Fed.R.Civ.P. 12(c), for judgment on the pleadings. The matter was referred to Magistrate Judge Douglas F. Eaton for a Report and Recommendation (“Report”). In the Report, Magistrate Judge Eaton recommends that this matter be remanded to the Commissioner for further consideration.


The Court may accept, reject or modify, in whole or in part, the findings and recommendations set forth within the Report. 28 U.S.C. § 636(b)(1). When there are objections to the Report, the Court must make a *de novo* determination of those portions of the Report to which objections are made. *Id.*; *Rivera v. Barnhart*, 423 F.Supp.2d 271, 273 (S.D.N.Y. 2006). When no objections are made, the Court may adopt the Report if “there is no clear error on the face of the record.” *Adee Motor Cars, LLC v. Amato*, 388 F.Supp.2d 250, 253 (S.D.N.Y. 2005) (citation omitted). Magistrate Judge Eaton advised the parties that failure to file timely objections will preclude appellate review. Neither party filed objections, and the time in which to do so has expired.

Magistrate Judge Eaton determined that the administrative law judge's ("ALJ") finding that plaintiff was not disabled, because she has the residual functional capacity to perform the physical exertion requirements of light work, was not supported by the record. The magistrate judge further found that the ALJ made several errors in evaluating the evidence, and in not seeking clarification from a testifying witness.

After careful review of the magistrate judge's Report, the Court finds that it is not facially erroneous, and that the recommendation to remand is appropriate. Therefore, the Court adopts the Report's recommendation and, for the reasons stated therein, this case is hereby remanded to the Commissioner of Social Security for further appropriate proceedings and a reassessment of the issues identified by the magistrate judge. The parties' motions are denied in all other respects. The case is hereby closed.

Dated: New York, New York
September 27, 2007

SO ORDERED:



GEORGE B. DANIELS
United States District Judge